

## REMARKS

This paper is responsive to any paper(s) indicated above, and is responsive in any other manner indicated below.

## SUPPLEMENTAL REISSUE OATH/DECLARATION

The reissue oath/declaration has been objected to based upon the Office Action concern(s) as set forth within the Office Action. MPEP 1444's section II indicates that Applicant is able to defer the filing of a Supplemental Reissue Oath/Declaration until the end of prosecution). Applicant is presently in the process of having the inventor(s) execute a Reissue Oath/Declaration covering all presently-existing reissue errors and/or all papers submitted to date (including this paper), and such executed Reissue Oath/Declaration will be submitted shortly. That is, Applicant purposefully is having a Reissue Oath/Declaration executed subsequent to submission of this present Amendment, so that such Reissue Oath/Declaration can be comprehensive to cover amendments submitted (i.e., errors corrected) with this present Amendment, and obviate any need for another supplemental Reissue Oath/Declaration. If the Reissue Oath/Declaration becomes the only issue barring allowance of the application, the Examiner is asked to please refrain from issuing another action, and instead is invited to call the undersigned at the local Washington, D.C. telephone number of 703-312-6600 to provoke accelerated filing of such document to move the application to allowance.

### **WRITTEN CONSENT OF ASSIGNEE**

The Written Consent Of Assignee has been objected to based upon the Office Action concern(s) as set forth within the Office Action. Traversal is appropriate. However, to travel a path of least resistance to grant of a patent, Applicant is presently in the process of having the Assignee execute another Written Consent of Assignee (at the same time the Reissue Oath/Declaration mentioned above is being executed) to cover amendments submitted (i.e., errors corrected) with this present Amendment, and obviate any need for another supplemental Written Consent Of Assignee. If the Written Consent Of Assignee becomes the only issue barring allowance of the application, the Examiner is asked to please refrain from issuing another action, and instead is invited to call the undersigned at the local Washington, D.C. telephone number of 703-312-6600 to provoke accelerated filing of the of such document to move the application to allowance.

### **PENDING CLAIMS**

Claims 15-26 were pending, under consideration and subjected to examination in the Office Action. Appropriate claims have been amended, canceled and/or added (without prejudice or disclaimer) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, such changes are unrelated to any prior art or scope adjustment and are simply refocused claims in which Applicant is present interested. At entry of this paper, Claims 15-26 will be pending for further consideration and examination in the application.

### REISSUE BROADENING – TWO-YEAR BAR

The paragraph numbered “1” on “Page 3” of at least the 14 May 2009 Office Action states (in part): “Clarification is needed as to the claiming of benefit to copending reissue 09/328910. This reissue should be claimed as a division of 09/328910, otherwise the two-year bar against the reissue application broadening invention applies.” **Strong traversal is appropriate.**

More particularly, a portion of **MPEP Section 1412.03**, subsection **“IV WHEN A BROADENED CLAIM CAN BE PRESENTED”**, page 1400-29, Rev. 7, July 2008, is reproduced and highlighted herewith, as follows:

SECTION OF PATENTS	1412.03
ed to ich it aim 1	Thus, a broadened claim may be presented in a reissue application after the two years, even though the broadened claim presented after the two years is different than the broadened claim presented within the two years. Finally, if intent to broaden is indicated in a parent reissue application within the two years, a broadened claim can be presented in a continuing (continuation or divisional) reissue application after the two year period. In any other situation, a broadened claim <u>cannot</u> be presented, and the examiner should check carefully for the improper presentation of broadened claims.
ADD- IS  ory of there intent) of the 1516	A reissue application filed on the 2-year anniversary

**Given that Applicant's parent (original) reissue application indicated an intent to, and did in fact, broaden within two years from the grant of the original patent,** and given the fact that **Applicant claims 120 priority** from such parent (original) reissue application, it is respectfully submitted that **broadening is**

permitted within the present application (whether it is a CONTINUATION application or DIVISIONAL application). Accordingly, reconsideration and withdrawal of any rejection of Applicant's claim(s) based upon the two-year (2-year) broadening bar, are respectfully requested.

In order to travel a path of least resistance to issuance of a patent, an opening portion of Applicant's specification has been amended (without prejudice/disclaimer) at this time to label the present application as a "Divisional" of the parent (original) reissue application. In the event that the Examiner decides that "Continuation" is a more appropriate label, the Examiner is herein authorized to change such label by examiner's amendment.

#### **RECAPTURE REJECTION - TRAVERSED**

The recapture rejection of ones of Applicant's claims as set forth beginning on page 4 of the Office Action (and/or within prior Office Actions) is respectfully traversed.

As an aside, it is respectfully noted that Applicant's application at the time of the 14 May 2009 Office Action included only claims 15-26, whereas it is noted that page 4 of such Office Action contains errors, in that such page discusses claims 29, 49, 53 and 54 which are not included within the present application (but may have instead been included within a co-pending reissue application related to the present application). Applicant respectfully requests that any subsequent actions concerning the present application, accurately list claims existing within the application.

In spite of traversal, the recapture rejection of claims 15-26 is presently obviated owing to such claims being amended (or written) to include the

**disputed recapture limitations.** Such amendment or rewriting (without prejudice or disclaimer), should not be taken as an indication or admission that the objection or rejection was valid, or as a disclaimer of any scope or subject matter, but is merely lessening of a number of claims having alleged recapture concerns, to lessen a number of issues so as to move prosecution toward allowance more quickly.  
Reconsideration and allowance of such claims, are respectfully requested.

#### **EXAMINER INVITED TO TELEPHONE**

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

#### **RESERVATION OF RIGHTS**

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any objection/rejection was valid, or as a disclaimer of any scope or subject matter. Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, i.e., Applicant continues (indefinitely) to

maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 1374.32049RV1) and please credit any excess fees to such deposit account.

Respectfully submitted,

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